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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 United States of America,
21
22 Plaintiff,
23 v.
24 Sun State Builders, Inc.,
25 Defendant.

26 **COMPLAINT**

27 The United States of America, acting at the request of the Administrator of the United
28 States Environmental Protection Agency ("EPA"), alleges as follows:

29 **INTRODUCTION**

30 1. This is a civil action brought pursuant to Section 113(b)(1) of the Clean Air Act
31 ("CAA"), 42 U.S.C. § 7413 (b)(1), for injunctive relief and the assessment of civil penalties
32 against Sun State Builders, Inc. ("Sun State") for violations of the CAA and the federally
33 approved Arizona State Implementation Plan ("Arizona SIP").

34 2. Authority to bring this action is vested in the United States Department of Justice
35 pursuant to 28 U.S.C. §§ 516 and 519, and 42 U.S.C. § 7605.

36 3. Notice of the commencement of this action has been given to the State of Arizona
37 as required by § 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).
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1 **JURISDICTION**

2 4. This Court has subject matter jurisdiction pursuant to § 113(b) of the CAA, 42
3 U.S.C. § 7413 (b). This Court also has jurisdiction over the parties to this action.

4 **VENUE**

5 5. Venue is proper in Arizona under § 113(b) of the CAA, 2 U.S.C. § 7413(b), because
6 the violations occurred in Maricopa County, Arizona.

7 **DEFENDANT**

8 6. Defendant Sun State is a construction general contractor which does business in
9 Arizona and which is based in Tempe, Arizona.

10 7. At all times relevant herein, Sun State has operated several construction projects
11 (“Projects”) in Maricopa County, Arizona.

12 8. Sun State is a person as defined in § 302(e) of the CAA, 42 U.S.C. § 7602(e).

13 **GENERAL ALLEGATIONS**

14 9. A portion of Maricopa County, which includes the Phoenix, Arizona, metropolitan
15 area, is a designated serious non-attainment area for the National Ambient Air Quality Standards
16 (“NAAQS”) for particulate matter in the ambient air having an aerodynamic diameter of less
17 than or equal to 10 micrometers (PM₁₀).

18 10. Maricopa County Air Quality Department (“MCAQD”) Rule 310, pertaining to the
19 control of fugitive dust in Maricopa County, is part of the federally approved and federally
20 enforceable SIP that the State of Arizona submitted to EPA pursuant to § 110 of the Act, 42
21 U.S.C. § 7410.

22 11. At all times relevant to this litigation, Sun State operated the Projects at the
23 following locations in Maricopa County, Arizona: (1) a commercial development at 1151 North
24 Fiesta Boulevard, Gilbert; (2) a commercial development near Country Club Drive and Southern
25 Avenue in Mesa; (3) a commercial development near 89th Avenue and Peoria Avenue in Peoria;
26 (4) a commercial development near 39th Avenue and Washington Street in Phoenix; (5) a
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1 commercial development at 1838 W. Parkside Lane, Phoenix; and (6) a commercial development
2 near Elliot Road and Kyrene Road in Tempe.

3 12. At all times relevant to this litigation, the Projects involved the import, export,
4 excavation and/or storage of sand, soil, gravel and other bulk materials, and were dust generating
5 and earthmoving operations, within the meaning of MCAQD regulations.

6 13. MCAQD Rule 310 was revised in March of 2008, and the references to the
7 provisions of Rule 310 in this Complaint are to those provisions as they existed at the time the
8 violations are alleged to have occurred.

9 **COUNT ONE**
10 **(Failure to Install Suitable Trackout Control Devices)**

11 14. Paragraphs 1 through 13 are incorporated herein by reference as though fully set
12 forth below.

13 15. On July 29, 2005, an MCAQD inspector inspected the Project located at 39th
14 Avenue and Washington Street, Phoenix, and determined that the Project lacked suitable
15 trackout control devices within the meaning of Section 308.3(a) of MCAQD Rule 310 at the
16 exits to the Project. An NOV was issued to Sun State by the MCAQD inspector for failure to
17 use suitable trackout control devices in violation of Section 308.3(a)(I) of MCAQD Rule 310
18 on that date at that location.

19 16. On December 12, 2005, an MCAQD inspector inspected the Project located at Elliot
20 Road and Kyrene Road, Tempe, and determined that the Project lacked suitable trackout control
21 devices, within the meaning of Section 308.3(a) of MCAQD Rule 310, at the exits to the Project.
22 An NOV was issued to Sun State by the MCAQD inspector for failure to use suitable trackout
23 control devices in violation of Section 308.3(a)(I) of MCAQD Rule 310 on that date at that
24 location.

25 17. The Projects located at 39th Avenue and Washington Street, Phoenix, and Elliot
26 Road and Kyrene Road, Tempe, both contained a disturbed surface area of at least five acres.
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1 18. On February 7, 2007, the EPA issued an NOV pursuant to § 113(a)(1) of the CAA,
2 42 U.S.C. § 1413, finding the violations described in Paragraphs 15 and 16 of this Complaint.

3 19. Each day that Sun State operated the Projects without installing, maintaining and
4 using a suitable trackout control device or devices, as set forth in Paragraphs 15 and 16 of this
5 Complaint, constitutes a separate violation of requirements of Section 308.3(a)(1) of MCAQD
6 Rule 310 and the federally approved Arizona SIP, which includes the provisions of MCAQD
7 Rule 310.

8 20. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b); the Federal Civil Penalties
9 Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), amended by Pub.
10 L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); and 61 Fed.
11 Reg. 69,360 (Dec. 31, 1996), Sun State is liable for a civil penalty of up to \$32,500 per day for
12 each violation of Section 308.3(a)(1) of MCAQD Rule 310 and the Arizona SIP occurring on or
13 after March 16, 2004.

14 21. Plaintiff is informed and believes that unless enjoined by this Court pursuant to the
15 provisions of § 113(b) of the CAA, 42 U.S.C. § 7413(b), Sun State will continue to violate the
16 requirements and provisions of Section 308.3(a)(1) of MCAQD Rule 310 and the state SIP in the
17 manner alleged herein.

18 **COUNT TWO**
19 **(Failure to Immediately Clean Up Trackout)**

20 22. Paragraphs 1 through 21 are incorporated herein by reference as though fully set
21 forth below.

22 23. On January 12, 2005, an MCAQD inspector inspected the Project located at Country
23 Club Drive and Southern Avenue in Mesa, and observed trackout extending both eastbound and
24 westbound from the project exit on Southern Avenue totaling approximately 180 feet in length
25 that was not cleaned up during the approximately 1½ hour long inspection. An NOV was issued
26 to Sun State by the MCAQD inspector for failure to immediately clean up trackout exceeding
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1 50 linear feet in violation of Section 308.3(b)(1) of MCAQD Rule 310, on that date at that
2 location.

3 24. On December 12, 2005, an MCAQD inspector inspected the Project located at Elliot
4 Road and Kyrene Road, Tempe, and observed trackout on roads on the east and west sides of
5 the Project totaling at least 300 feet in length that was not cleaned up during the hour long
6 inspection. An NOV was issued to Sun State by the MCAQD inspector for failure to
7 immediately clean up trackout exceeding 50 linear feet in violation of Section 308.3(b)(1) of
8 MCAQD Rule 310, on that date at that location.

9 25. On March 22 and 31, 2006, an MCAQD inspector inspected the Project at 1838 W.
10 Parkside Lane in Phoenix, and observed trackout extending from the project exit totaling more
11 than 50 feet in length that was not cleaned up during either inspection, both of which lasted
12 approximately 45 minutes. An NOV and a Notice to Comply were issued to Sun State by the
13 MCAQD inspector for failure to immediately clean up trackout exceeding 50 linear feet in
14 violation of Section 308.3(b)(1) of MCAQD Rule 310, on those dates at that location.

15 26. On February 8, 2007, an MCAQD inspector inspected the Project located at 89th
16 Avenue and Peoria Avenue in Peoria, and observed trackout extending from the project exit
17 totaling approximately 140 feet in length that was not cleaned up during the approximately one-
18 half hour long inspection. An NOV was issued to Sun State by the MCAQD inspector for
19 failure to immediately clean up trackout exceeding 50 linear feet in violation of Section
20 308.3(b)(1) of MCAQD Rule 310, on that date at that location.

21 27. On February 7, 2007, the EPA issued an NOV pursuant to § 113(a)(1) of the CAA,
22 42 U.S.C. § 1413, finding the violations described in Paragraphs 24 through 25 of this
23 Complaint.

24 28. On January 9, 2008, the EPA issued an NOV pursuant to § 113(a)(1) of the CAA,
25 42 U.S.C. § 1413, finding the violation described in Paragraph 26 of this Complaint.

26 29. Each day that Sun State operated the Projects without immediately cleaning up
27 trackout exceeding 50 linear feet in length, as set forth in Paragraphs 24 through 26 of this
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1 surface area on which the earthmoving operations were taking place did not have a visible crust
2 and the soil was not sufficiently damp to prevent loose grains of soil from becoming dislodged.

3 36. The inspector observed that no water was being applied to control the dust and no
4 water application equipment was available on-site, and determined that no water application
5 system was being operated at that time.

6 37. Water is the dust control measure specified in the dust control plan for the site.

7 38. An NOV was issued to Sun State by the MCAQD inspector for a violation of
8 MCAQD Rule 308.7, failure to operate a water application system during dust generating
9 activity on a disturbed surface of one acre or more, on that date at that location.

10 39. On February 7, 2007, the EPA issued an NOV pursuant to § 113(a)(1) of the CAA,
11 42 U.S.C. § 1413, finding the violation described in Paragraphs 33 through 37 of this Complaint.

12 40. Each day that Sun State failed to operate a water application system, as set forth in
13 Paragraphs 33 through 37 of this Complaint, constitutes a separate violation of requirements of
14 Section 308.7 of MCAQD Rule 310 and the federally approved Arizona SIP, which includes the
15 provisions of MCAQD Rule 310.

16 41. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b); the Federal Civil Penalties
17 Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), amended by Pub.
18 L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); and 61 Fed.
19 Reg. 69,360 (Dec. 31, 1996), Sun State is liable for a civil penalty of up to \$32,500 per day for
20 each violation of Section 308.7 of MCAQD Rule 310 and the Arizona SIP occurring on or after
21 March 16, 2004.

22 42. Plaintiff is informed and believes that unless enjoined by this Court pursuant to the
23 provisions of § 113(b) of the CAA, 42 U.S.C. § 7413(b), Sun State will continue to violate the
24 requirements and provisions of Section 308.7 of MCAQD Rule 310 and the state SIP in the
25 manner alleged herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the United States of America respectfully requests that it be awarded
3 the following relief against Sun State:

4 A. Issuance of an injunctive order requiring that Sun State comply with the
5 requirements of MCAQD Rule 310 and the Arizona SIP relating to the control of fugitive dust;

6 B. Assessment of a civil penalty of up to Thirty-Two Thousand Five Hundred Dollars
7 (\$32, 500.00) per day for each violation of MCAQD Rule 310 occurring after March 15, 2004;

8 C. Reimbursement of costs and disbursements incurred in this action pursuant to 42
9 U.S.C. § 7413(b); and

10 D. Such other and further relief as this Court may deem appropriate.

11 Respectfully submitted this _____ day of April, 2008.

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4 CERTIFICATION OF SERVICE
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6 I hereby certify that on April ----, I electronically transmitted the attached document to
7 the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic
8 Filing to the following CM/ECF registrants:

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